

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code §§ 25-211(b), 25-830(f) (2008 Supp.) and Mayor's Order 2001-96 (June 28, 2001) as revised by Mayor's Order 2001-102 (July 23, 2001), hereby gives notice of the intent to adopt the following proposed rules that would amend the existing ABRA civil penalty schedule set forth in section 800 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rules are intended to update the ABRA civil penalty schedule, which has not been revised since 2004. The proposed rules would also make it a secondary tier violation when a licensee does not comply with the operating hours on both its license application and entertainment endorsement application. Additionally, the proposed rules clarify that the one-year auditing period is based on a calendar year. Finally, the proposed rules prohibit the holder of a caterer's license who also holds an on-premises retailer's license from selling or serving alcohol under its caterer's license on property owned, leased, or rented by the on-premises retailer.

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules are also being transmitted to the Council of the District of Columbia, for a ninety (90) day period of review. The proposed rules will become effective in not less than thirty (30) days from publication of this notice in the D.C. Register, or upon approval by the Council by resolution, whichever occurs later. If the Council does not approve or disapprove the proposed rules by resolution, in whole or in part, within the ninety (90) day review period, the proposed rules shall be deemed disapproved.

Chapter 7 (General Operating Requirements) of Title 23 (April 2004) is amended by adding a new section 719 to read as follows:

"719. HOURS OF OPERATION

719.1 A licensee shall be required to follow the operating hours listed on both its license application and entertainment endorsement application. It shall be a secondary tier violation for a licensee to exceed its listed hours of operation.

Title 23 DCMR is amended by replacing section 800 in its entirety to read as follows:

CHAPTER 8 – ENFORCEMENT, INFRACTIONS, AND PENALTIES

800. ABRA CIVIL PENALTY SCHEDULE

| Section | Description | Violation | Warning |
|------------|--|-----------|---------|
| 25-112(e) | Failure to file a statement of expenditures | Secondary | Y |
| 25-113a(b) | Failure to obtain an entertainment endorsement | Secondary | Y |

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|--------------|--|-----------|---|
| 25-113a(c) | Failure to obtain a sidewalk café or summer garden endorsement | Secondary | Y |
| 25-113(b) | Failure to file a quarterly report | Secondary | Y |
| 25-113(b)(1) | Kitchen facilities not open 2 hours before closing | Secondary | Y |
| 25-113(b)(5) | Wine removed from restaurant not properly sealed | Secondary | Y |
| 25-341(b) | Dividing a manufacturers package in Ward 4 | Secondary | Y |
| 25-341(c) | Selling a Single container of beer, malt liquor, or ale in Ward 4 | Secondary | Y |
| 25-342(b) | Dividing a manufacturers package in Ward 7 | Secondary | Y |
| 25-342(c) | Selling a Single container of beer, malt liquor, or ale in Ward 7 | Secondary | Y |
| 25-343(b) | Dividing a manufacturers package in Ward 8 | Secondary | Y |
| 25-343(c) | Selling a Single container of beer, malt liquor, or ale in Ward 8 | Secondary | Y |
| 25-344(b)(1) | Dividing a manufacturers package in ANC 1D | Secondary | Y |
| 25-344(b)(2) | Selling a Single container of beer, malt liquor, or ale in ANC 1D | Secondary | Y |
| 25-345(b)(1) | Dividing a manufacturers package in Ward 2 | Secondary | Y |
| 25-345(b)(2) | Selling a Single container of beer, malt liquor, ale, or half pints in Ward 2 | Secondary | Y |
| 25-346(b)(1) | Dividing a manufacturers package in Ward 6 | Secondary | Y |
| 25-346(b)(2) | Selling a Single container of beer, malt liquor, ale, or half-pints in Ward 6 | Secondary | Y |
| 25-401(c) | False Statements on license application | Primary | N |
| 25-405 | Transfer of Ownership without Board approval | Primary | N |
| 25-701 | No ABC Manager on duty | Secondary | Y |
| 25-702 | Owner knows, does not report employee's criminal conviction | Primary | Y |
| 25-711 | Posting and carrying of licenses | Secondary | Y |
| 25-712 | Signs: Warning re: pregnancy | Secondary | Y |
| 25-713 | Signs: legal drinking age/valid ID | Secondary | Y |
| 25-721 | Hours of Sale & Delivery- manufacturer & wholesaler | Primary | N |
| 25-722 | Hours of Sale & Delivery – off premises | Primary | N |
| 25-723 | Hours of Sale & Delivery – on-premises | Primary | N |
| 25-724 | Restriction of hours of operation | Primary | N |
| 25-725 | Noise | Secondary | Y |
| 25-726 | Control of litter, trash, garbage, and proper disposal of refuse, including cooking oils | Secondary | Y |
| 25-731 | Credit and delinquency | Secondary | Y |
| 25-733 | Delivery and payment records and reports | Secondary | Y |
| 25-734 | Sale by retailer on credit | Secondary | Y |
| 25-735 | Gifts and loans from manufacturer | Secondary | Y |

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|----------------|--|-----------|---|
| 25-736 | Gifts and loans from wholesaler | Secondary | Y |
| 25-741(a) | A & B licensees provide go-cups | Secondary | Y |
| 25-741(b) | Back-up drinks | Secondary | Y |
| 25-742 | Solicitation of drinks by employee | Secondary | Y |
| 25-743 | Tie-in purchases | Secondary | Y |
| 25-751 | Limitations on Container Size | Secondary | Y |
| 25-752 | Containers to be labeled | Secondary | Y |
| 25-753 | Keg Registration | Secondary | Y |
| 25-754 | Restrictions on storage of beverages | Secondary | Y |
| 25-761 | Structural requirements | Secondary | Y |
| 25-762 | Substantial change approvals | | |
| 25-762(b)(1) | - increase occupancy or the use of interior space | Secondary | Y |
| 25-762(b)(2) | - expand exterior public or private space including summer gardens or sidewalk cafes | Primary | N |
| 25-762(b)(3) | - expand to another floor, roof, deck | Primary | N |
| 25-762(b)(4) | - Provide for or expand entertainment area | Secondary | Y |
| 25-762(b)(5) | - Diminish or expand dining or food prep area | Secondary | Y |
| 25-762(b)(6) | - Provide permanent space for dancing | Secondary | Y |
| 25-762(b)(7) | - Change exterior design | Secondary | Y |
| 25-762(b)(8) | - Provide music or entertainment if none previously. | Secondary | Y |
| 25-762(b)(9) | - Change from recorded to live music or live entertainment or change the kind of music or entertainment provided | Secondary | Y |
| 25-762 (b)(10) | - Change entertainment to include nude performance | Primary | N |
| 25-762(b)(11) | - Change from full-menu to snack menu | Secondary | Y |
| 25-762(b)(12) | - Change on premises to carry-out, add carry out | Secondary | Y |
| 25-762(b)(13) | - Extend hours of operation | Primary | Y |
| 25-762(b)(14) | - Provide new mechanical/electronic entertainment | Secondary | Y |
| 25-762(b)(15) | - Change trade name/corp name w/ ownership change | Secondary | Y |
| 25-762(b)(16) | - Change booth size | Secondary | Y |
| 25-762(b)(17) | - Reduce number of toilet facilities | Secondary | Y |
| 25-762(b)(18) | - Increase number of vessels under on-premises | Secondary | Y |
| 25-763 | Signage | Secondary | Y |
| 25-764 | Advertisements | Secondary | Y |
| 25-765 | Advertisements on windows and doors | Secondary | Y |
| 25-766 | Prohibited statements | Secondary | Y |
| 25-771 | Reporting | Secondary | Y |
| 25-772 | Unlawful importation | Secondary | Y |
| 25-781 | Sale to minors | Primary | Y |
| 25-781 | Sale to intoxicated person | Primary | N |

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|----------------|--|-----------|---|
| 25-782(a) | Class A allow under 18 to enter between 8am-3pm | Primary | Y |
| 25-782(d) | Deny admittance to someone of legal drinking age | Primary | Y |
| 25-783(a) | Sale to someone who fails to produce a valid ID | Primary | N |
| 25-783(b) | Take reasonable steps to ascertain of legal age | Primary | N |
| 25-784(a) | Prohibit any person under 21 from sell, give, furnish or distribute, except as provided in 784b | Secondary | Y |
| 25-784(b) | 18-20 may sell, serve or deliver, but not bartend | Secondary | Y |
| 25-791(a) | Failure to place license in safekeeping | Secondary | Y |
| 25-797 | Transfer of Responsibility for licensee security | Primary | N |
| 25-823(2) | Use of establishment for unlawful or disorderly purpose | Primary | N |
| 25-823(5) | Failure or refusal to allow entry to ABRA investigator or MPD | Primary | N |
| 25-823(6) | Failure to follow voluntary agreement | Secondary | Y |
| 25-823(6) | Failure to follow security plan | Secondary | Y |
| 25-823(6) | Failure to follow Board Order | Primary | N |
| 25-826(b) | Assault on police officer, ABRA investigator or government official | Primary | N |
| 23 DCMR 208.19 | Knowingly false or misleading affidavit submission | Primary | N |
| 23 DCMR 600.1 | Use of Unapproved Trade Name | Secondary | Y |
| 23 DCMR 712 | Participation in a pub crawl without Board approval or in a manner other than as approved by the Board | Secondary | Y |
| 23 DCMR 719 | Exceeding permitted hours of operation or entertainment | Primary | Y |
| 23 DCMR 1204 | Failure to Maintain Books and Records | Primary | Y |
| 23 DCMR 2000.1 | The selling, delivering, or serving of alcoholic beverages at a catered event where snack items are the only food products served by the Caterer | Primary | N |
| 23 DCMR 2102 | Failure to maintain or keep records or invoices | Primary | N |
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Chapter 20 (Catering License) of Title 23 (April 2004) is amended by adding a new subsection 2000.4 to read as follows:

2000.4 The holder of a Caterer's license who also holds an on-premises retailer's license shall not be permitted to sell or serve alcoholic beverages under its Caterer's license on property owned, leased, or rented by the on-premises retailer.

Chapter 21 (Restaurant and Hotel Food Sales Requirements) of Title 23 (April 2004) is amended by adding a new sentence to the end of subsection 2101.2 to read as follows:

“The one-year auditing period shall be based on a calendar year (January – December)”

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, Acting General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the D.C. Register, to the above address.